

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**



**GARAGE, ROLL-UP, OVERHEAD & APPARATUS BAY DOOR MAINTENANCE,
REPAIR & REPLACEMENT SERVICES**

CONTRACT NO.: DCAM-16-NC-0054

THIS CONTRACT FOR Maintenance, Repair & Replacement Services of Garage, Roll-up, Overhead and Apparatus Bay Doors ("Contract") is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** ("Department" or "DGS") and **Metropolitan Rolling Door, Inc.** (Metropolitan) ("Contractor").

WITNESSETH:

WHEREAS, the Department seeks to engage a Contractor to provide Garage, Roll-up , Overhead and Apparatus Bay Door Maintenance, Repair & Replacement Services for various District Fire Engines and Metropolitan Police Department locations;

WHEREAS, the Contractor is the only trained and certified company authorized to install, maintain and repair Electric Power Door products within the Washington, D.C. area.

WHEREAS, the Contractor submitted a proposal to provide the required services, and the Department wishes to engage the Contractor;

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Contract agree as follows:

**ARTICLE 1
SCOPE OF WORK**

The Contractor shall provide Garage, Roll-up, Overhead and Bay Door Maintenance, Repair & Replacement Services including, but not limited to, the following:

1.1 PROJECT BACKGROUND AND SUMMARY:

The Contractor shall provide all labor, supplies, materials, tools, vehicles, lifts transportation, travel and per diem, and every other item of expense necessary to perform all work related to on-call garage and roll-up overhead door inspection, maintenance and repair services for various District. Services performed may include but are not limited to:

- Adjusting or replacing springs on door locks and pulley drives,
- Adjusting and aligning spring tension and sprockets,
- Replacing hinges, links, chains, and belts,
- Installation of electric operators, receivers, and transmitters,
- Repair of rolling steel doors, replacing spring tube barrel, cables, long stem rollers, and brackets,
- Lubricating all moveable parts,
- Repair/adjust/replace rolling security screens,
- Repair/adjust/replace gear drives/housings,
- Repair/replace door panels when needed or necessary.

All services provided by the Contractor, herein shall be performed in accordance with the fixed fully loaded hourly rates during the hours of 6:00 a.m. and 8:00 p.m. Monday through Friday, except in the event of an emergency service need or as otherwise expressed by the Contracting Officer's Technical Representative (COTR).

1.2 ASSESSMENTS, PREVENTATIVE MAINTENANCE & ON-CALL REPAIRS:

The Contractor shall perform all inspection, maintenance and repair services as specified herein and as necessary to maintain the optimum level of efficiency for each piece of equipment.

The District reserves the right to remove equipment that becomes obsolete or non-repairable and add new and or replacement equipment at any point during the term of the Contract. Additionally added equipment will be serviced at the fix fully loaded hourly rates specified herein. The Contractor will be notified quarterly, in writing by the COTR of equipment that requires removal and or replacement.

1.2.1 Preventative Maintenance (PM)

Maintenance services shall include but are not limited to cleaning, oiling, lubrication, adjustment, calibration, alignment, timing and operations testing for each piece of equipment. The Contractor shall furnish all necessary lubricants, cleaning supplies, and testing equipment and all other supplies and or equipment necessary to complete all preventative maintenance services. Any parts requiring replacement will be replaced in accordance with ***Section 1.3.2 Parts Replacement*** as specified herein.

1.2.1.1 Preventative Maintenance (PM) Schedule

The Contractor shall provide preventative maintenance services for the equipment specified herein on an annual basis. Upon approval of the Agreement, dates of service will be mutually agreed upon between the COTR and the Contractor. The Contractor agrees to provide the requested services on the dates specified and agreed to by the Department and the Contractor, or within three (3) working days. The Department reserves the right to decrease the scheduled number of PM services requests as old equipment becomes obsolete.

1.2.2 Repairs

The Contractor shall provide repair services necessary to keep the equipment fully, operational. Repair services for both emergency and non-emergency outages will be provided upon telephone request from the COTR and or his/her designee. Repair services shall be completed the same working day, unless the Contractor's representative notifies the COTR of another timeframe immediately upon diagnosis of the equipment deficiency. All parts requiring replacement will be replaced in accordance with section B.3.2 Parts Replacement as specified herein.. The Contractor shall make every effort to perform all repair services during the designated business hours. The Department may at its discretion, provide access to the equipment during non-business hours as necessary and at no additional charge to the Department. The Contractor shall secure approval from the COTR, in advance and in writing for all non-emergency service repairs that require facility access outside the designated business hours as specified herein.

1.3 DELIVERABLES:

1.3.1 Documentation and Reporting

The Contractor is required and shall provide the following reporting to the Contracting Officer and or COTR in the format and sequence expressed herein. All reports shall include, at a minimum the following information: facility location, date of service, equipment make, model and serial number (where applicable), a list of replacement parts and part numbers, cost of parts, description of any noted deficiencies, corrective action suggested or taken, total labor hours projected and or expended.

1.3.1.1 Work Order Estimate (WOE)

The Contractor shall perform an assessment before starting any work and provide the COTR with a written WOE. The WOE shall include a detailed explanation of the equipment condition prior to repairs, any work completed in attempts to resolve the service issue, all work and any parts

required to complete the repairs. Work order tickets are required for all emergency and non-emergency maintenance and repair service requests.

1.3.1.2 Service Report

Following the completion of repair services, the Contractor shall submit a complete Service Report to the COTR detailing the service provided, including any necessary repair and or part replacements. All service reports shall be signed by the COTR and or his/her designee, as certification that all work was completed as described, all work is complete to the satisfaction of the COTR, and all equipment is fully operational. The report shall include all reporting requirements as expressed herein. The service report shall be submitted to the COTR within five (5) calendar days following completion of a service call.

1.3.1.3 Annual Contract Service History Report

The Contractor shall provide a cumulative annual service report to the Contracting Officer and COTR by October 31. The Annual Service Report shall be in Microsoft Excel format and inclusive of the minimum reporting requirements as detailed herein.

1.3.2 Parts Replacement

This Contract shall include replacement of all parts that become worn or inoperable, or that otherwise affect the equipment's operability in any way. The Contractor must submit to the COTR and or his/her designee a written estimate detailing required parts and receive prior approval to proceed with the . Parts replaced by the Contractor shall be new, factory manufactured, brand name or equal. The Contractor agrees to maintain an adequate supply or be able to obtain within a reasonable amount of time all necessary replacement parts in order to perform repairs and maintenance in a timely manner. Consumables and other supply items are hereby excluded. All parts replaced shall be the property of the Department.

1.3.2.1 The Contractor shall submit a published parts price list within 10-days following award.

1.3.2.2 The Department will not allow for any mark-up on the retail price of parts.

1.3.3 Response Time

The Contractor shall be available to respond twenty-four (24) hours a day, seven (7) days a week. The Contractor shall respond to non-emergency, non-work service requests within four (4) hours from the time the COTR and or his/her designee places the service call. The Contractor shall respond to all emergency

service requests within two (2) hours from notification of the emergency service need.

1.3.4 Security

The Contractor shall provide maximum protection of the facility entryways and exits affected by required inspection, maintenance, service and or repair work.

The Contractor shall secure the facility entry and exit points for the full duration of such work.

1.4 TECHNICAL REQUIREMENTS:

1.4.1 Technicians

The Contractor shall provide a repair crew of at least two (2) Service Technicians for both emergency and non-emergency repair service requirements as needed.

1.4.2 Qualifications

The Contract shall have a minimum of two (2) Service Technicians who have been factory-trained on the equipment and or who have a minimum of three (3) consecutive years of experience in maintaining and repairing the equipment specified herein.

1.4.3 Licenses, Permits and Certifications

The Contractor shall possess and maintain, throughout the term of the Contract any specialty licenses and or certifications required to be certified to complete maintenance and repair services for garage and roll-up overhead door equipment.

1.4.4 Warranty of Work

The Contractor shall guarantee all services performed by the Contractor, including all replaced parts, for a minimum of one (1) year from the date of service. If it is determined, that failure has occurred due to defective parts or workmanship, the Contractor shall correct the failure at no additional expense to the Department.

1.4.5 Work Site & Safety Standards

1.4.5.1 The Contractor shall keep all driveways, loading areas, and entrances servicing premises clear and available to District employees, the public, and emergency vehicles at all times.

1.4.5.2 The Contractor shall not use these areas for parking or storage of materials.

1.4.5.3 The Contractor shall schedule all deliveries to minimize use of driveways and entrances.

1.4.5.4 The Contractor shall schedule and conduct the work with the least interference to facility operations.

1.4.5.4.1 When interruption of facility operations is unavoidable, the Contractor shall coordinate the service schedule with the COTR and or Designated Representative in advance.

1.4.5.5 The Contractor shall not interrupt any utility services, serving the facility of a work site unless permitted under the following conditions:

1.4.5.5.1 The Contractor shall make arrangements to provide temporary utility services during all interruption periods.

1.4.5.5.2 The Contractor shall make notification to the COTR no less than five (5) workdays in advance of the proposed service outage.

1.4.5.5.3 The Contractor shall not proceed with any planned utility outages without prior written notice from the COTR expressing notice to proceed.

1.4.5.5.4 The Contractor shall obtain all required approvals and or permits from Utility Authorities for each Jurisdiction.

ARTICLE 2 RESERVED

ARTICLE 3 CONTRACT TYPE

3.1 CONTRACT TYPE:

This is an Indefinite Delivery Indefinite Quantity Contract (IDIQ) with firm fixed fully loaded hourly rates.

ARTICLE 4 COMPENSATION

4.1 The Department will order and the Contractor shall deliver at least the minimum of Two-Hundred and Fifty Dollars (\$250.00) and the Department may order a maximum of Five-Hundred Thousand Dollars (\$500,000.00) in goods and services during the Contract period. All services provided by the Contractor, herein shall be paid for by the Department in accordance with the fixed, fully loaded hourly labor rates, as specified in the Bid Form (Attachment A).

ARTICLE 5 CONTRACT TERM

5.1 BASE TERM:

The base term of the Contract shall be from date of execution through twelve (12) months thereafter.

5.2 OPTION YEAR(S):

The Department shall have the right to extend the term of this Contract for two (2) one (1) year option periods; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Contract.

5.3 OPTION YEAR PRICING:

In the event the Department exercises its option to extend the Contract as described in Section 5.2, the firm fixed fully loaded hourly rate unit prices applicable to such Option Years is set forth in Exhibit A.

ARTICLE 6 DEPARTMENT'S RESPONSIBILITIES

6.1 INFORMATION AND SERVICES:

6.1.1 The Department will provide full information in a timely manner regarding the requirements of all projects subject of this Contract.

6.2 DEPARTMENT'S DESIGNATED REPRESENTATIVES:

6.2.1 Chief Contracting Officer (CCO) In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Christopher Weaver
Director/Chief Contracting Officer
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail: christopher.weaver@dc.gov

6.2.2 Authorized Changes by the Contracting Officer (CO) & the CCO

6.2.2.1 The CCO and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

6.2.2.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CCO.

6.2.2.3 In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

6.2.3 Contracting Officer's Technical Representative (COTR)

6.2.3.1 The COTR is responsible for general administration of the Contract and advising the CCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility for the day-to-day monitoring, supervision of the Contract, of ensuring the "work" conforms to the requirements set forth in the Contract, and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the Contract. These include:

6.2.3.1.1 Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the Contract;

6.2.3.1.2 Coordinating site entry for Contractor personnel, if applicable;

6.2.3.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;

6.2.3.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and

6.2.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

6.2.3.1.6 The address and telephone number of the COTR(s) is:

Paul Hoftyzer
COTR | FEMS Facility Manager
Department of General Services
Facilities Management Division
300 Indiana Ave. NW
Washington, D.C. 20001
(202) 727-4368 Office
(202) 320-6086 Cell
E-mail: paul.hoftyzer@dc.gov

Lawrence Williams
COTR | MPD Facilities Manager
Department of General Services
Facilities Management Division
300 Indiana Ave. NW
Washington, D.C.
(202) 727-2080 Office
(202) 498-9850 Cell
E-mail: lawrence.williams@dc.gov

6.2.4 The COTR shall NOT have the authority to:

6.2.4.1 Award, agree to, or sign any Contract document, change order, change directive, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

6.2.4.2 Grant deviations from or waive any of the terms and conditions of the Contract;

6.2.4.3 Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,

6.2.4.4 Authorize the expenditure of funds by the Contractor;

6.2.4.5 Change the period of performance; or

6.2.4.6 Authorize the use of District property, except as specified under the Contract.

6.2.4.7 The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

ARTICLE 7 CHANGES IN THE WORK

7.1 EXECUTED CHANGE ORDER REQUIRED:

Changes to the Contract may be made only by a written Change Order executed by the Department. The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

7.1.2 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

7.3 PROMPT NOTICE:

In the event the Contractor encounters a situation, which the Contractor believes to be a change to this Contract, the Contractor, shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

7.4 EXECUTED CHANGE ORDERS FINAL:

The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Event giving rise to the Change Order.

ARTICLE 8 COMPLIANCE REQUIREMENTS

8.1 CONFORMANCE WITH LAWS:

It shall be the responsibility of the Contractor to perform the Agreement in conformance with the Department's Procurement Regulations (27 DCMR § 4700 et seq.) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District

of Columbia government; and it is the sole responsibility of the Contractor to determine the Department's procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

8.2 LICENSING, ACCREDITATION AND REGISTRATION:

The Contractor and all of its subcontractors shall comply with all applicable District of Columbia, state and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Contract.

8.3 STANDARD CONTRACT PROVISIONS:

The Standard Contract Provisions for Use with Supplies and Services Contracts (2007) are applicable to this Contract and are incorporated by this reference.

8.4 LIVING WAGE ACT:

The Living Wage Act is applicable to this Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by that Act (Attachment F).

8.5 SERVICE CONTRACT ACT:

The Service Contract Act is applicable to the resulting Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by this Act. Applicable wage determination rates are attached hereto as Attachment H.

ARTICLE 9 INSURANCE

9.1 REQUIRED INSURANCE:

The Contractor shall maintain the following types of insurance throughout the life of the contract:

- 9.1.1** Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage.
- 9.1.2** Workers' Compensation and Employers Liability Coverage providing statutory benefits for all persons employed by the Contractor, or its subcontractors at or in connection with the Work.

- 9.1.3** Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury.
- 9.1.4** Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Two Million Dollars (\$2,000,000).

9.2 ADDITIONAL INSURED:

Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable reduced without thirty (30) days prior written notice to the Department.

9.3 WAIVER OF SUBROGATION:

All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

9.4 STRENGTH OF INSURER:

All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

**ARTICLE 10
CLAIMS & DISPUTE RESOLUTION**

10.1 NOTICE OF CLAIM:

If the Contractor has complied with all provisions in Section 7 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Department's Chief Contracting Officer, in writing, of its claim. The notice must be delivered to the Department within fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered to the Department's Chief Contracting Officer within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim. All claims must be submitted pursuant to the procedures set forth in section 4733 of the Department's procurement rules and section 908 of the District's Procurement Practices Reform Act of 2010 (PPRA).

10.2 CONTENTS OF NOTICE OF CLAIM:

The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department under this Contract.

10.3 APPEAL PROCEDURES:

All claims arising under or in connection with the Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the PPRA. However, if a third party brings any claim or suit against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim or suit is being litigated.

ARTICLE 11 PAYMENTS

11.1 INVOICING:

The Contractor shall submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and include a valid Purchase Order Number. The Department will no longer accept hardcopy invoice submittals; going forward all invoices must be submitted electronically through the EASI Pay Portal on the Department Website at <https://dgs.onbaseonline.com>.

The following address should be referenced for all Invoices:

Department of General Services
Office of the Chief Financial Officer
2000 14th Street N.W. | 5th Floor
Washington, D.C. 20001

EASI First time users will be prompted to register for Portal access; for assistance with the registration process, technical assistance and or additional information on the EASI Pay Portal, please contact the Portal Help Desk at (301) 563-3025.

11.2 RIGHT TO WITHHOLD PAYMENTS:

The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment, of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

- (a) The work is defective and such defects have not been remedied; or
- (b) The Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- (c) The Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- (d) The Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section C of this Contract).

11.3 LIABILITY:

The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment under the contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 EXTENT OF CONTRACT:

The Contract, which includes this Agreement and the exhibits attached hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

12.2 CONFORMANCE WITH LAWS:

It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Rules (27 DCMR § 4700 et seq.) and all statutes,

laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

12.3 GOVERNING LAW:

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

12.4 ASSIGNMENT:

The Department and Contractor respectively bind themselves, their partners, members, joint ventures, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint ventures, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

12.5 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS:

12.5.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

12.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

12.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

12.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.

- 12.5.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.
- 12.5.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- 12.5.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

12.6 INSPECTION FOR SUPPLIES AND SERVICES:

- 12.6.1** To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.
- 12.6.2** Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.
- 12.6.3** The Department shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate any contractor or offeror with respect to a debarment or suspension of the Contractor or any such Subcontractor.

12.7 LAWS AND REGULATIONS INCORPORATED BY REFERENCE:

All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental

bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

12.8 LAWS AND REGULATIONS INCORPORATED BY REFERENCE:

All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

12.9 TAX EXEMPTION PROVISION:

Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

12.10 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS:

12.10.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

12.10.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or

indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

12.10.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

12.11 RESPONSIBILITY FOR AGENTS AND CONTRACTORS:

At all times and during Project, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

12.12 ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER EMPLOYEES:

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

12.13 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS:

12.13.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the

Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

12.13.2 In the event the Contract is terminated as provided in Section 11.11.1, the Department shall be entitled:

12.13.2.1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

12.13.2.2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

12.11.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

12.14 COVENANT AGAINST CONTINGENT FEES PROVISIONS:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage or contingent fee.

12.14 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS:

12.14.1 The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

12.14.1.1 Employment, upgrading, or transfer;

12.14.1.2 Recruitment or recruitment advertising;

12.14.1.3 Demotion, layoff, or termination;

12.14.1.4 Rates of pay, or other forms of compensation; and

12.14.1.5 Selection for training and apprenticeship.

12.14.2 Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

12.14.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

12.14.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.14.5 The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

12.14.6 The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

12.14.7 The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

12.15 BUY AMERICAN ACT PROVISION:

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

12.16 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT PROVISION:

The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

12.17 SERVICE CONTRACT ACT PROVISION:

The Contractor agrees that the construction management work performed under this Contract shall be subject to the Service Contract Act (41 U.S.C. §§ 351). The wage rates applicable to this Project are attached as Exhibit 2. The Contractor further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

12.18 FALSE CLAIMS ACT:

Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

12.19 INTERPRETATION OF CONTRACT:

All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits, the General Conditions, and the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

12.20 INDEPENDENT CONTRACTOR:

In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

12.21 CONFIDENTIAL INFORMATION:

In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to

equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

12.22 NO THIRD-PARTY BENEFICIARY RIGHTS:

Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

12.23 MEDIA RELEASES:

Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

12.24 GOODS AND SERVICES:

This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

12.25 NOTICES:

All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the Contractor:

Christopher Weaver
Director/Chief Contracting Officer
Department of General Services
2000 14th St, NW – 8th Floor
Washington, DC 20009

This Paragraph shall be read as imposing minimum requirements for distribution of required contractual notices, and not as displacing distribution requirements with respect to design documents, construction submittals, periodic reports, and other documents.

12.26 RESERVED:

12.27 BINDING EFFECT; ASSIGNMENT:

The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Contract, the Department is relying on the

particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

12.28 SURVIVAL:

All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

12.29 NO WAIVER:

If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

12.30 REMEDIES CUMULATIVE:

Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy, the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

12.31 HEADINGS/CAPTIONS:

The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

12.32 ENTIRE AGREEMENT; MODIFICATION:

The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

12.33 SEVERABILITY:

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added

automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

12.34 ANTI-DEFICIENCY ACT:

The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 CANCELLATION BEFORE NOTICE TO PROCEED:

The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Contractor shall not be entitled to any compensation or damages if cancellation occurs.

13.2 TERMINATION FOR DEFAULT:

The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

- 13.2.1** the Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or
- 13.2.2** the Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
- 13.2.3** the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, material men, Subcontractors or suppliers when payment is due; or

- 13.2.4** becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or
- 13.2.5** the Contractor fails to pay its debts in a timely manner or becomes insolvent or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.
- 13.2.6** the Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.
- 13.2.7** If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

13.3 TERMINATION FOR CONVENIENCE:

- 13.3.1** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.
- 13.3.2** After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Contractor shall also promptly notify the

Department, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Project, and, in consultation with the Department, settles outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

13.3.3 The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Lump Sum Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Lump Sum Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

13.3.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

13.3.5 The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs 12.3.2 through 12.3.4, and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

13.4 EFFECT OF WRONGFUL TERMINATION:

Any termination for cause, which is later determined to have been improperly affected, shall be deemed to have been a termination for convenience pursuant to Paragraph 12.4 and shall be governed by that Paragraph.

13.5 CONTINUED RESPONSIBILITY AFTER TERMINATION:

If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

13.6 SUSPENSION:

13.6.1 Suspension at the Convenience of the Department.

The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods

as the Department elects by giving the Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

13.6.2 Payment Upon Suspension For Convenience.

In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Contractor and the Lump Sum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

- 13.6.2.1** Additional Costs of the Work, if any, which are incurred by the Contractor, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and
- 13.6.2.2** Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.
- 13.6.2.3** Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the Contractor shall not be entitled to an increase in overhead or profit for a suspension ordered by the Department.

ARTICLE 14 MISCELLANEOUS PROVISIONS.

14.1 INDEMNIFICATION:

The Contractor shall indemnify and hold harmless the Department, the District of Columbia, and the respective employees, officers and agents of either from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnities or the Project, to the extent caused by the failure of the Contractor to perform the work in accordance with the standard of care set forth in Section 1 hereto; provided, however, that it is understood and agreed that the grant of indemnification made hereby shall not extend to designers or builders engaged by the Department with regard to claims or costs asserted by such designers or builders arising from the failure of the Contractor to timely process submittals but it is understood and agreed that that the preceding limitation on the grant of indemnification shall not bar claims asserted by the Department in its own name; and, provided further, that the Department agrees and understands that design reviews conducted by the Contractor are solely for the purpose of assessing whether the proposed designs comply with the Department's functional and aesthetic requirements and that in no event shall the Contractor be liable to the Department if the systems reflected in such designs fail to perform as intended.

14.2 GOVERNING LAW.

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

14.3 STANDARD CONTRACT PROVISIONS.

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March, 2007 ("SCP") are incorporated by reference as part of this contract.

14.4 SERVICE CONTRACT ACT PROVISION.

The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act and the Living Wage Act. The wage rates applicable to this Contract are attached as Exhibit C.

14.5 LIVING WAGE ACT.

The Contractor agrees that the work performed under this Contract shall be subject to the District of Columbia Living Wage Act.

14.6 FALSE CLAIMS ACT.

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

14.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA).

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.

14.8 BUY AMERICAN ACT PROVISION.

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

14.9 ANTI-DEFICIENCY ACT.

The Department's obligations and responsibilities under the terms of the Contract are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. The Contract shall not constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

14.10 FREEDOM OF INFORMATION ACT.

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in **Subsection 6.2.3.1.6** that will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and

copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

14.11 RETENTION OF RECORDS: INSPECTIONS AND AUDITS.

- (a) The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.
- (b) The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.
- (c) The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.
- (d) The Contractor agrees to include the wording of this Section in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

The Contractor shall preserve all records described herein from the effective date of the Contract through completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

14.12 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS.

14.12.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

14.12.2 In the event the Contract is terminated as provided in Section 13.11.1, the Department shall be entitled:

- (a) To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- (b) As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- (c) No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all Contracts entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all Contracts made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the Contract if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

14.13 ETHICAL STANDARDS FOR OFFICE'S EMPLOYEES AND FORMER EMPLOYEES.

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the

Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

14.14 PUBLICITY.

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before the Contractor, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

14.15 SEVERABILITY.

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Contract is intended to be severable.

14.16 CONTRACTOR'S PERFORMANCE

The Contractor and the Contractor's employees shall perform the services specified herein as independent contractors, not as employees of the government and shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints related to the performance of this contract.

14.17 ORDER OF PRECEDENCE.

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (a) This Contract Document
- (b) Contract Exhibits other than the Standard Contract Provisions
- (c) Contractor's Proposal December XX, 2014 November 24, 2015
- (d) Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 7, 2007

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

DEPARTMENT OF GENERAL SERVICES, an agency within the executive branch of the Government of the District of Columbia

DEPARTMENT OF GENERAL SERVICES, an agency within the executive branch of the Government of the District of Columbia

Name: Christopher Weaver

Title: Director/Chief Contracting Officer

Date: _____

Signature: _____

**CONTRACTOR
METROPOLITAN ROLLING DOOR, INC.**

Name: _____

Title: _____

Date: _____

Signature: _____